

**MEMORANDUM OF AGREEMENT
BY AND BETWEEN
THE FEDERAL TRANSIT ADMINISTRATION,
MASSACHUSETTS STATE HISTORIC PRESERVATION OFFICER,
AND THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY REGARDING THE
COPLEY STATION ACCESSIBILITY PROJECT IN BOSTON, MASSACHUSETTS**

WHEREAS, the Federal Transit Administration (FTA) had determined that the proposed Copley Station Accessibility Project in Boston, Massachusetts would have no adverse effect upon the Boston Public Library (BPL), which is a National Landmark and is listed in the National Register of Historic Places, both individually and as a contributing element to the Back Bay Historic District; and

WHEREAS, FTA had determined that the proposed Copley Station Accessibility Project would have no adverse effect upon the Copley Station in-bound headhouse, which is a National Landmark and is listed in the National Register of Historic Places, both individually and as a contributing element to the Back Bay Historic District; and

WHEREAS, the FTA made these determinations after consulting with the Massachusetts State Historic Preservation Officer (MASHPO) in accordance with 36 CFR Part 800 -- the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, the FTA issued a Finding of No Significant Impact in December, 2004, based primarily upon proposals submitted by the Massachusetts Bay Transportation Authority (MBTA), which asserted that there would be no direct physical impact to the BPL; and

WHEREAS, during the preliminary site preparation for the project, the MBTA through its contractor removed four granite benches from the façade of the BPL without prior review and approval from the FTA or from MASHPO, and that during this removal the MBTA through its contractor damaged a corner of one of the benches. Shortly thereafter, all work on the site was halted; and

WHEREAS, the MBTA believes that in order to protect the BPL and ensure the successful removal of underground utilities, it is critical for the MBTA to undertake onsite preconstruction reconnaissance work to identify the exact location, condition, and relationship of the BPL foundation, Copley Station headhouse structure, and underground utilities; and

WHEREAS, the MBTA has determined that all non-invasive means to gather this information are infeasible or of little utility; and

WHEREAS, in accordance with 36 CFR Section 800.6(a)(1), the FTA has notified the Advisory Council on Historic Preservation (Council) of its adverse effect determination with specified documentation and the Council has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS, the MBTA now seeks permission to perform test pitting in the area adjacent to the BPL and the Copley Station headhouse to ensure the facilities are adequately protected, and that test pitting may result in an Adverse Effect to the BPL due to the potential for temporary shoring, permanent underpinning, or removal and ultimate replacement of the benches at the BPL.

NOW, THEREFORE, the FTA, MASHPO, and MBTA agree that test pitting in the area of the Copley Station headhouse is necessary and that such work shall be performed by the MBTA in accordance with the following stipulations.

Stipulations

The FTA will ensure that the following measures are carried out:

1. Further Alterations

Prior to any additional test pitting, shoring, underpinning or removal of the BPL benches, the FTA shall ensure that any such removal or underpinning shall be the subject of review, in consultation with the MASHPO and any other appropriate parties, as required under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 470f, and Section 4(f) of the U.S. Department of Transportation Act, 49 U.S.C. § 303. No work shall be performed prior to the issuance of a determination by the FTA.

2. Test Pitting and Reconnaissance

- a. All test pitting work shall be performed in accordance with the attached test pitting protocol, which is incorporated by reference herein. The protocol, and any amendments to the protocol, shall be submitted to the MASHPO, the Project Conservator (PC), the BPL, as well as the Boston Landmarks Commission (BLC) for their review and comment.
- b. The MBTA will ensure that the contractor will take all necessary steps to avoid, to the greatest degree possible, the need to remove the bench from the wall of the McKim Building. Throughout the test pitting procedure, the goal is to leave the remaining bench in place if it can be adequately and properly protected from any possible damage. During the course of the test pit operations, the determination as to whether or not the bench must be removed will be made in accordance with the following courses of action, listed in order from least invasive to most invasive.
 1. If test pitting reveals adequate support of bench exists, no action required with the exception of protecting the bench during construction
 2. If test pitting reveals that existing support is not adequate, the MBTA will direct the contractor to install temporary shoring for the test pitting operation and explore what, if any, long-term solution for construction may be needed.
 3. If test pitting reveals existing support is not adequate either temporarily or for an extended period of time during the construction, the MBTA will direct the contractor to install an underpinning system to protect the bench through the entire construction period.
 4. If test pitting reveals that the existing support is not adequate, the MBTA will direct the contractor to remove the bench in accordance the attached test pitting protocol.
- c. The PC shall oversee and monitor the test pitting as well as the bench removal process (if necessary) so as to ensure that the resources are handled as proscribed in the protocol. The MBTA shall provide the PC with adequate notice before the bench removal commences so as to ensure such oversight. The MBTA shall also provide the FTA, SHPO, the BLC, and the BPL with the opportunity to observe the bench removal. Each of the parties shall receive adequate notification of the work.

3. Dispute Resolution

If at any time during the implementation of this MOA, MBTA or the MASHPO objects to any actions proposed or the manner in which the terms of this MOA are implemented and cannot resolve the issue between them, they shall immediately notify and consult with FTA in order to resolve the objection. If FTA determines, within 30 days, that such objection(s) cannot be resolved, FTA will forward all documentation relevant to the dispute to the Council. Within 30 days after receipt of all pertinent documentation, the Council will either:

1. Provide FTA with recommendations, which FTA will take into account in reaching a final decision regarding the dispute; or
2. Notify FTA that it will comment pursuant to 36 CFR Section 800.7(b) and Section 110(1) of the National Historic Preservation Act and then proceed to comment. Any Council comment provided in response to such a request will be taken into account by FTA in accordance with 36 CFR Section 800.6(a)(1)(C)(ii) with reference to the subject of the dispute.

If the Council does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, FTA may render a decision regarding the dispute. In reaching its decision, FTA will take into account all comments regarding the dispute from the parties to the MOA.

Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute; FTA's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

FTA will notify all parties of its decision in writing before implementation of that portion of the undertaking that was subject to dispute. FTA's decision will be final.

4. Amendments and Noncompliance

Any signatory to this MOA who determines that its terms will not or cannot be carried out or that an amendment to its terms must be made, that party shall immediately consult with the other parties to develop an amendment to this MOA pursuant to 36 CFR §§800.6(c)(7) and 800.6(c)(8). The amendment will be effective on the date a copy signed by all of the original signatories is filed with the Council. If the signatories cannot agree to appropriate terms to amend the MOA, any signatory may terminate the agreement in accordance with Stipulation 5, below.

5. Termination

If an MOA is not amended following the consultation set out in Stipulation 4, it may be terminated by any signatory or invited signatory. Within 30 days following termination, FTA shall notify the signatories if it will initiate consultation to execute an MOA with the signatories under 36 CFR §800.6(c)(1) or request the comments of the Council under 36 CFR §800.7(a) and proceed accordingly.

6. Duration

If the terms of this Memorandum of Agreement have not been implemented by February 2008, this MOA shall be considered null and void. In such event, the FTA shall so notify the

parties to this MOA, and if it chooses to continue with the undertaking, shall reinitiate review of the undertaking in accordance with 36 CFR Part 800.

Execution of this Memorandum of Agreement and implementation of its terms evidences that the FTA has afforded the Council an opportunity to comment on the proposed Copley Station Accessibility Project, and specifically the bench removal work at the Boston Public Library and that the FTA has taken into account the effects of the undertaking on historic properties.

SIGNATORIES:

FEDERAL TRANSIT ADMINISTRATION

By: _____ Date: _____
Richard H. Doyle, Regional Administrator

Concur: _____ Date: _____
Wendy A. Lee, Regional Counsel

MASSACHUSETTS HISTORICAL COMMISSION

By: _____ Date: _____
Brona Simon, Executive Director
Massachusetts State Historic Preservation Officer

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

By: _____ Date: _____
Daniel A. Grabauskas, General Manager

Approved as to Form:

By: _____ Date: _____
William A. Mitchell, General Counsel

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